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U.S. Citizenship  
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FILE: WAC 02 151 51403 Office: CALIFORNIA SERVICE CENTER Date: OCT 25 2004

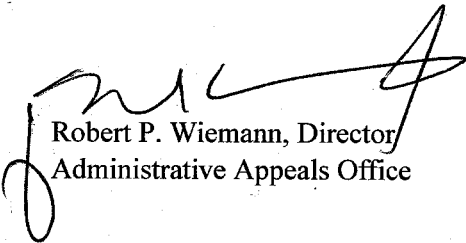
IN RE: Petitioner:  
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to  
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is an organization incorporated in the State of California in August 1997. It exports paper products. It seeks to employ the beneficiary as its general manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that: (1) the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity for the United States entity; or, (2) a qualifying relationship had been established between the petitioner and the beneficiary's foreign employer. In an October 31, 2003 decision, the AAO withdrew the director's decision on the issue of qualifying relationship but affirmed the director's decision on the issue of the beneficiary's managerial and executive capacity.

On motion received December 3, 2003, counsel for the petitioner submits the petitioner's request to reopen and reconsider the previous decision. The petitioner submits: (1) its California Forms DE-6, Employer's Quarterly Wage Report, for the first and third quarter of 2002 and the third quarter of 2003; (2) a report of new employees; (3) samples of commission payments made to foreign individuals and entities purportedly from March 2002 to the date of submission; (4) a diploma of a supervisor; (5) a current organizational chart; (6) job duties for the petitioner's employees and foreign sales representatives; and, (7) a revised and current description of the beneficiary's job duties.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding. The AAO observes that the record already contains the most pertinent California Form DE-6, the Form DE-6 for the second quarter of 2002, the quarter in which the petition was filed. The petitioner has not explained the relevance of the California Forms DE-6 submitted on appeal. In addition, the petitioner's samples of commission payments to foreign entities, for the most part are invoices and a payout schedule for transactions occurring subsequent to filing the petition. The three-payout transactions occurring prior to filing the petition are not new and could have been previously presented. Further, even if the AAO considered the commissions paid to agents overseas, the petitioner has not presented sufficient evidence that the representatives were under the supervision and control of the petitioner's employees or that the petitioner's employees' primary duties were to supervise and control the work of others.

The petitioner's submission of evidence of employees hired subsequent to filing the petition, its current organizational chart, and job descriptions for those employees is not relevant to this proceeding. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner's revised description of the beneficiary's duties includes his additional responsibilities associated with supervising new employees, again facts that are not relevant to this proceeding. A petitioner may not

make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Neither counsel nor the petitioner has submitted any pertinent precedent decisions to establish that the AAO decision was based on an incorrect application of law or policy.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. *See* 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.